

MIKE GUFFEY

IBLA 83-610

Decided December 29, 1983

Appeal from decision of New Mexico State Office, Bureau of Land Management, canceling noncompetitive oil and gas lease. NM-55067.

Affirmed.

1. Oil and Gas Leases: Cancellation -- Oil and Gas Leases: Lands  
Subject to -- Oil and Gas Leases: Noncompetitive Leases

An oil and gas lease, issued in response to an over-the-counter offer to lease, may properly be canceled by BLM where the lands described in such lease had been included in a prior lease, since canceled, and therefore should have been leased pursuant to the simultaneous oil and gas leasing system, in accordance with 43 CFR 3112.1-1.

APPEARANCES: Lawrence M. Pickett, Esq., Las Cruces, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Mike Guffey has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated March 28, 1983, canceling his noncompetitive oil and gas lease, NM-55067.

On November 29, 1982, appellant filed an over-the-counter noncompetitive oil and gas lease offer for 640 acres of land situated in sec. 34, T. 22 S., R. 2 E., New Mexico principal meridian, Dona Ana County, New Mexico. Effective February 1, 1983, noncompetitive oil and gas lease NM-55067 was issued to appellant by BLM, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (Supp. V 1981).

On March 2, 1983, Exxon Corporation (Exxon) wrote BLM, contending that the land included in appellant's oil and gas lease should not have been subject to an over-the-counter filing, but, rather, should have been leased

pursuant to the simultaneous oil and gas leasing system (43 CFR Subpart 3112). <sup>1/</sup> Exxon explained that noncompetitive oil and gas lease NM-41354, including sec. 34, had been issued to it on June 4, 1982, effective July 1, 1982. Exxon explained that by decision dated June 17, 1982, BLM canceled its lease as to sec. 34 because a prior oil and gas lease, NM-40511, had already been issued to appellant effective June 1, 1982. In actuality, that lease was a geothermal resources lease issued to appellant pursuant to the Geothermal Steam Act of 1970, 30 U.S.C. § 1001 (1976). Exxon did not file an appeal from the June 1982 BLM decision within the 30-day appeal period. In its letter, Exxon requests that sec. 34 "be made available for simultaneous filing at your earliest convenience."

In its March 1983 decision, BLM canceled appellant's oil and gas lease because "the lands in question are available for leasing only under the simultaneous procedure set forth in 43 CFR 3112.1-1."

In his statement of reasons for appeal, appellant makes a number of arguments concerning the nature of Exxon's March 3, 1983, letter; however, we need not address those concerns because the regulations clearly dictate the results in this case.

The Departmental regulations provide authority for BLM to cancel a noncompetitive oil and gas lease in the present circumstances. Thus, 43 CFR 3112.1-1 provides that "[a]ll lands which \* \* \* are covered by canceled or relinquished leases \* \* \* are subject to leasing only in accordance with this subpart," i.e., pursuant to the simultaneous oil and gas leasing system. <sup>2/</sup> Moreover, 43 CFR 3112.6-3 provides that: "In the event a lease has been issued on the basis of an \* \* \* offer which properly should have been rejected \* \* \* action shall be taken to cancel the \* \* \* lease unless the rights of a bona fide purchaser \* \* \* intervene." We have long held that BLM must reject an over-the-counter oil and gas lease offer for lands included in a prior lease since canceled and that, where a lease has inadvertently been issued on the basis of such an offer rather than through the simultaneous oil and gas leasing system, that lease must be canceled unless the rights of a bona fide purchaser have intervened. Conoco, Inc., 75 IBLA 83 (1983); Paul S. Coupey, 64 IBLA 146 (1982). The same result would apply even where the prior lease had erroneously been canceled. Cf. David A. Provinse, 50 IBLA 271 (1980).

In the present case, even though BLM may have improperly canceled Exxon's oil and gas lease, such cancellation required that the lands be offered for leasing only through the simultaneous system. We conclude that BLM properly canceled appellant's noncompetitive oil and lease issued pursuant to an over-the-counter offer, in the absence of any intervening rights of a bona fide purchaser.

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<sup>1/</sup> While Exxon styled its letter a protest, and BLM treated it as such, the letter did not meet the requirements for a protest under 43 CFR 4.450-2. See Goldie Skodras, 72 IBLA 120 (1983). The letter did, however, serve to draw BLM's attention to the applicable regulatory requirements concerning lease offers for lands included in a canceled lease.

<sup>2/</sup> 43 CFR 3112.1-1 was amended effective Aug. 22, 1983, but without effect on the issue presented herein. See 48 FR 33678 (July 22, 1983).

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Gail M. Frazier  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Bruce R. Harris  
Administrative Judge

